

Appl. No.: 10/068,570  
Amdt. Dated February 9, 2006  
Reply to Office action of August 9, 2005

### **REMARKS/ARGUMENTS**

As an initial matter, Applicants note that an initialed copy of the PTO Form 1449 that was submitted with Applicants' Information Disclosure Statement filed January 12, 2005 has not been returned to Applicants' representative with the Office Action. Accordingly, it is requested that an initialed copy of the Form 1449 be forwarded to the undersigned with the next communication from the PTO. In order to facilitate review of the references by the Examiner, a copy of the Information Disclosure Statement and the Form 1449 are attached hereto. Copies of the cited references were provided at the time of filing the original Information Disclosure Statement, and, therefore, no additional copies of the references are submitted herewith. Applicants will be pleased to provide additional copies of the references upon the Examiner's request if it proves difficult to locate the original references.

Claims 1 and 6-19 have been cancelled without prejudice to or disclaimer of the subject matter encompassed thereby in order to further prosecution of this application. Applicants expressly reserve the right to file continuing applications or take other such appropriate measures to seek protection of the inventions encompassed by the cancelled subject matter.

Claim 3 has been amended to incorporate the limitations of cancelled claim 1. Accordingly, no new matter has been added by way of amendment. This claim amendment was not presented earlier as Applicants earnestly believe that the previously presented claims recited patentable subject matter. The Examiner is respectfully requested to enter these claim amendments to further prosecution or to place the application in better condition for appeal.

Claims 3-5 and 23-25 are pending in the application. Reconsideration of these claims is respectfully requested in view of the aforementioned claim amendment and the following remarks. The Examiner's comments in the Office Action are addressed below in the order set forth therein.

#### **The Rejections of the Claims Under 35 U.S.C. §§102(e) and 103(a) Should Be Withdrawn**

The Examiner has rejected claims 1 and 8-9 under 35 U.S.C. §102(e) as being anticipated by Wagner *et al.* (U.S. Pat. No. 6,630,358). The Examiner has also rejected claims 6-7 and 10-19 under 35 U.S.C. §103(a) as being obvious over: 1) the Wagner reference in view of Ebato *et*

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*al.* (1994) *Anal. Chem.* 66:1683 (claims 6-7); 2) the Wagner reference in view of Samoylova *et al.* (1999) *Muscle & Nerve* 22: 460-466 (claims 10-13 and 16-19); and 3) the Wagner reference in view of Hengerer *et al.* (1999) *Biosensors & Bioelectronics* 14: 139 (claims 14-15).

Although Applicants disagree with the Examiner's arguments, for the purpose of furthering prosecution claims 1 and 6-19 have been cancelled. As stated above, Applicants expressly reserve the right to file continuing applications or take other such appropriate measures to seek protection of the inventions encompassed by the cancelled subject matter. Accordingly, Applicants submit that the rejections under 35 U.S.C. §§102(e) and 103(a) have been obviated and should be withdrawn.

#### The Examiner's Objection to the Claims Should Be Withdrawn

Although claims 3-5 and 23-25 have been objected to, the Examiner has indicated on page 8 of the Final Office Action dated August 9, 2005 that these claims would be allowable if amended to include "all of the limitations of the base claim and any intervening claims." Claim 3 has been amended as described above to incorporate the limitations of cancelled claim 1. Claims 4, 23, and 25 depend directly from amended claim 3, claim 5 depends from claim 4, and claim 24 depends from claim 23. Accordingly, Applicants respectfully submit that the Examiner's objection to claims 3-5 and 23-25 be withdrawn.

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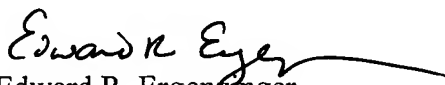
### CONCLUSION

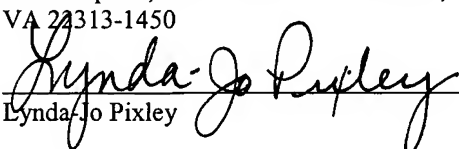
In view of the above amendments and remarks, Applicants submit that the Examiner's objections to the claims and rejections under 35 U.S.C. §§102(e) and 103(a) are overcome. Applicants respectfully submit that this application is now in condition for allowance. Early notice to this effect is solicited.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject Application, the Examiner is invited to call the undersigned.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

  
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<b>Customer No. 00826</b> <b>ALSTON &amp; BIRD LLP</b> Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Raleigh Office (919) 862-2200 Fax Raleigh Office (919) 862-2260	<b>"Express Mail" mailing label number EV 387075056 US</b> <b>Date of Deposit February 9, 2006</b>  I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450  Lynda Jo Pixley
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